

STATE OF CALIFORNIA
STATE ENERGY RESOURCES

CONSERVATION AND DEVELOPMENT COMMISSION

DOCKET 00-AFC-12C	
DATE	JUN 14 2005
RECD.	JUN 14 2005

In the Matter of:

MORRO BAY MODERNIZATION
AND REPLACEMENT PROJECT
(DUKE ENERGY)

Docket No. 00-AFC-12

CITY OF MORRO BAY'S WRITTEN COMMENTS
RE: PRESIDING MEMBER'S PROPOSED
AMENDED ORDER AUTHORIZING DEMOLITION
OF MORRO BAY TANK FARM

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The City of Morro Bay ("City") respectfully submits its written comments pursuant to the Notice of Commission Hearing To Consider Presiding Member's Amended Order Authorizing Demolition of the Morro Bay Tank Farm. Although the City disagrees with some of the conclusions and statements made in the Proposed Amended Order, after participating in the Committee Hearing on May 20, 2005, it is supportive of the findings and conclusions overall. However, this brief will set forth one very important disagreement with the Committee and request that the Commission include "**LAND 1**" as a condition for the demolition of the tank farm.

II. LAND USE

Although the City does not have regulatory authority over the Power Plant, it does administer a lease for pipeline for discharging water, a pipeline for conveying oil to the tank farm, and cable and pipe for cathodic protection of the pipelines. The lease is subject to a 50-year agreement between the City of Morro Bay and Duke. The 50-year Agreement, which may not be extended or held over under the granting statutes, expired on November 14, 2004. (A copy of the Lease Agreement is attached hereto and was attached as Exhibit "B" to Exhibit 118: Prepared testimony of Rick Algert on behalf of Intervenor City of Morro Bay, dated December 11, 2001. Sponsored by Intervenor City; admitted into evidence on December 17, 2001.)

With the expiration of the lease in November 2004, City and Duke negotiated a new Lease Agreement that was approved and executed by the City Council for the City of Morro Bay on September 26, 2004. Instead of executing the agreement, Duke reneged on its previous

promises to the community and has refused to execute the lease agreement that was agreed upon by both the City and Duke.

With respect to Condition of Certifications for LAND USE, the City is adamant that **LAND-1** be added to the Conditions for Demolition. **LAND-1** states as follows:

LAND-1 The project owner shall comply with the State requirements (Pub. Resources Code section 6701-6706) for the leasing of tide and submerged lands involving the Public Trust for Commerce, Navigation and Fisheries administered by the City of Morro Bay for the project's Outfall Area.

Verification: The project owner shall submit to the California Energy Commission's Compliance Project Manager (CPM) a copy of the final executed Outfall Lease Agreement that covers the City's administered property. **Said Lease Agreement shall be submitted prior to November 15, 2004** or prior to the start of "commercial operation," whichever occurs first.

Since the Lease between the City and Duke has expired, Duke is currently trespassing on the City's State Tide and Submerged Lands. Prior to the commencement of demolition, Duke must be required to secure a long-term lease with the City of Morro Bay for the use of the outfall pipeline for discharging water, the pipeline for conveying oil to the tank farm, and the cable and pipe for cathodic protection. (*See* written testimony of Rick Algert on behalf of the City of Morro Bay, Exhibit 118, admitted on December 17, 2001.) Mr. Algert's testimony (also found at pages 315-318 of the official transcript) is undisputed. Indeed, Mr. Trump, testifying on behalf of Duke, admitted: "We agree that we need to renew the Outfall easement which expires November 14, 2004" (transcript at 270:4-6), and that: "We agree that prior to commencement of construction, we will have to secure a long-term lease for the Outfall easement." (Transcript at

270:18-20.) Moreover, the granting statutes¹ specifically prohibit franchises (leases) in excess of 50 years. (See, e.g., Chapter 1076 of the Statutes of 1947, Section 1(a)).

As the Commission is well aware, projects cannot be "Data Adequate" when site control or LORS conformity is lacking. Thus, Duke must obtain a new Lease Agreement from Morro Bay prior to the commencement of any phase of the project. Clearly, the Commission took into consideration the testimony and evidence and included as a condition of certification that Duke obtain a new lease prior to November 15, 2004 and this requirement must apply to any phase of the project that is approved by the Commission.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Commission include **Land 1** in the Presiding Member's Proposed Amended Order Authorizing Demolition of the Morro Bay Tank Farm.

Dated: June 14, 2005

Respectfully submitted,



Robert Schultz
City Attorney for Intervener City of Morro Bay

¹ These include: Chapter 1076 of the Statutes of 1947, amended by Chapter 413 of the Statutes of 1955, Chapter 1874 of the Statutes of 1957 and Chapter 70 of the Statutes of 1960.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
 }
COUNTY OF SAN LUIS OBISPO }

I, the undersigned, declare that I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 years and not a party to the within action. My business address is 595 Harbor Street, Morro Bay, CA 93442.

On June 14, 2005, I served in the manner indicated below the foregoing documents, described as:

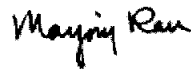
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RE: PRESIDING MEMBER'S PROPOSED
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on the interested parties in this action by placing a true copy(ies) thereof in a sealed envelope(s) addressed to all parties on the attached service list.

I caused such envelope(s) to be deposited in the United States Mail at Morro Bay, California, with postage thereon fully prepaid. I am familiar with the City of Morro Bay's practice of collecting and processing correspondence for mailing. It is deposited with the United States postal service each day, and that practice was followed in the ordinary course of business for the service herein attested to. [CCP §1013(a)(3).]

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 14, 2005, at Morro Bay, California.



Marjory Rau

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00-AFC-12

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Docket Optical System - Docket No. 00-AFC-12: Written Comments

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Attached please find an electronic copy of the City of Morro Bay's Written Comments Re: Presiding Member's Proposed Amended Order Authorizing Demolition of Morro Bay Tank Farm, as well as the related Proof of Service.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

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